

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
September 15, 2015

v

KALVIN DARRELL OVERTON,

Defendant-Appellee.

No. 321727
Oakland Circuit Court
LC No. 2014-249348-FH

Before: GADOLA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order granting defendant's motion to dismiss. The order of dismissal followed the trial court's granting of defendant's motion to suppress evidence. We reverse.

This case arises from a traffic stop of defendant's vehicle after Michigan State Troopers Justin Cilia and Ron Courtley observed defendant make an improper turn off of Michigan Ave. and onto Martin Luther King, Jr., Blvd. (MLK) in Pontiac. The troopers witnessed defendant make a right turn into the left-most lane of southbound traffic, between the middle left-turn lane and the far-right lane.

During a traffic stop based on defendant's improper turn, Courtley noticed a handgun in plain view under the driver's seat of defendant's vehicle. Upon further inspection, Courtley noticed that the handgun's identification marks had been altered, and located seven grams of marijuana behind the driver's seat.

Defendant was charged with carrying a concealed weapon, MCL 750.227, possession of marijuana, MCL 333.7403(2)(d), and altering identification marks on a firearm, MCL 750.230. Defendant filed a motion to suppress the handgun and marijuana, arguing that defendant's turn was not improper under MCL 257.647(1)(a), and as such, the troopers lacked reasonable suspicion to conduct a traffic stop of defendant's vehicle.

At a hearing on the motion, the trial judge agreed with defendant that MCL 257.647(1)(a) could not be interpreted to require a driver to make a turn only into the right-most lane of a roadway without leading to impractical results. The trial judge expressed his concern that, if he found defendant's turn violated MCL 257.647(1)(a), any potential driver making a Michigan left-hand turn would be breaking the law because a driver would be required to enter the right

lane before traveling quickly across several lanes to make an immediate left-hand turn. The trial judge then granted the motion based on what he perceived to be an illogical interpretation of MCL 257.647(1)(a). Based on the suppression of the weapon and the marijuana, defendant orally moved to dismiss the case, and the trial judge granted the motion.

On appeal, the prosecutor argues that the trial court erred in its interpretation of MCL 257.647(1)(a) and conclusion that the troopers lacked reasonable suspicion to perform a traffic stop of defendant's vehicle. We agree.

This Court reviews a trial court's findings of fact in a suppression hearing for clear error. *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009). A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). The ultimate decision on a motion to suppress is reviewed de novo. *Hyde*, 285 Mich App at 438. Finally, issues of statutory interpretation and application are questions of law that this Court reviews de novo. *People v Stone Transport, Inc*, 241 Mich App 49, 50; 613 NW2d 737 (2000).

The United States and the Michigan Constitutions prohibit unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. "When evidence has been seized as a result of an unreasonable search and seizure, it must be excluded from trial." *People v Chowdhury*, 285 Mich App 509, 517; 775 NW2d 845 (2009). Warrantless searches are presumptively unreasonable under the Fourth Amendment unless a specific exception to the warrant requirement applies. *Arizona v Gant*, 556 US 332, 338; 129 S Ct 1710; 173 L Ed 2d 485 (2009).

"The plain view exception to the warrant requirement allows a police officer to seize items in plain view when the officer is lawfully in a position to have that view and the evidence is obviously incriminatory." *People v Galloway*, 259 Mich App 634, 639; 675 NW2d 883 (2003). On appeal, defendant does not dispute the trooper's ability to view the contested evidence during the traffic stop, or whether the evidence seized was "obviously incriminatory." Therefore, the sole issue in this case is whether the officers made a lawful traffic stop, placing themselves in a position to plainly view the items inside defendant's vehicle.

A police officer "may stop and detain a motor vehicle on the basis of a reasonable and articulable suspicion that the vehicle or one of its occupants is violating the law." *People v Dillon*, 296 Mich App 506, 508; 822 NW2d 611 (2012). The occurrence of a traffic violation provides reasonable suspicion justifying a traffic stop. *Id.* at 510.

Defendant argues that the troopers could not have had a reasonable suspicion justifying their stop of his vehicle because he did not commit a traffic violation. However, the prosecutor presented sufficient evidence at the preliminary examination to establish that defendant made an improper turn under MCL 257.647(1)(a), which states that "[t]he driver of a vehicle intending to turn at an intersection shall do so as follows: . . . [b]oth the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway." MCL 257.647(1)(a).

On appeal, defendant does not dispute that he turned his vehicle into a lane other than the right-most lane of MLK. Instead, defendant argues that his turn did not violate MCL

257.647(1)(a) because “roadway,” as used in the statute, should be interpreted to mean “lane.” This interpretation contravenes the plain language of the statute. The Court’s responsibility in interpreting a statute is to determine and give effect to the Legislature’s intent. *People v Lowe*, 484 Mich 718, 723; 773 NW2d 1 (2009). The statute’s words are the most reliable indicator of intent, and should be interpreted based on their ordinary meaning and the context in which they are used in the statute. *Id.* at 718. The Legislature, in drafting the statute, is presumed to have intended the meaning it plainly expressed. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). MCL 257.647(1)(a) unambiguously requires a driver to turn as close as practicable to the “right-hand curb or edge” of a roadway. If MCL 257.647(1)(a) were read to require a driver simply to turn as close as practicable to the right-most side of any available lane, the words “curb” and “edge” would be superfluous.

Additionally, this Court must review statutory provisions in the context of the entire statute so as to produce a harmonious whole. *People v Pitts*, 222 Mich App 260, 266; 564 NW2d 93 (1997). Defendant’s proposed interpretation of “roadway” would be an incongruent definition in light of the Legislature’s usage of “roadway” throughout the Michigan Vehicle Code. For example, MCL 257.642 of the Michigan Vehicle Code provides a list of rules that apply “when a roadway has been divided into 2 or more clearly marked lanes for traffic.” This section of the Code unambiguously differentiates between “roadway” and “lane.” When the Legislature uses different terms, the different terms suggest different meanings. *People v Carruthers*, 301 Mich App 590, 604; 837 NW2d 16 (2013). Thus, when read in conjunction with MCL 257.642, MCL 257.647(1)(a) must require a driver to perfect a right-hand turn into the right-most lane of a roadway.

Defendant’s argument that interpreting MCL 257.647(1)(a) to require every driver to turn onto the right-most lane of a roadway would be “illogical” and “impractical” is similarly meritless. Defendant asserts that, if the statute were enforced as written, most drivers would be in violation when they perform an act as simple as making a Michigan-left turn. The fact that a law is routinely violated does not provide a basis for a court to ignore its provisions. Indeed, when a statute’s language is clear and unambiguous, “this Court must enforce the language as written.” *People v Lanzo Const Co*, 272 Mich App 470, 474; 726 NW2d 746 (2006).

Cilia and Courtley both testified that they observed defendant make a right turn into the left-most lane of southbound MLK, and not onto the right-most lane, as required by the statute. Because defendant did not turn his vehicle “as close as practicable to the right-hand curb or edge” of MLK, he violated the statute by its plain terms. The troopers possessed a reasonable suspicion on which to conduct a traffic stop of defendant’s vehicle when they witnessed him violate MCL 257.647(1)(a). Thus, they were lawfully outside defendant’s vehicle when Courtley noticed the weapon in plain view, and the resultant search of defendant’s vehicle was valid. The trial court erred when it rejected the clear and unambiguous language of MCL 257.647(1)(a).

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Kathleen Jansen
/s/ Jane M. Beckering